

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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EASTERN SAVINGS BANK, FSB,

Plaintiff,

Civil Action No.:
11-cv-01543-ENV-LB

-against-

PETER K. STREZ, CATHERINE A. STREZ
A/K/A CATHERINE A. KELLY, CITY OF
NEW YORK ENVIRONMENTAL
CONTROL BOARD, and
“JOHN DOE #1” through “JOHN DOE #12”,
the last twelve Names being fictitious and
unknown to plaintiff, the person or parties
intended being the tenants, occupants,
persons or corporations, if any, having or
claiming interest upon the premises
described in the Complaint,

Defendants.

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AFFIRMATION IN SUPPORT OF MOTION

JAIME LATHROP, Esq., an attorney at law, affirms as follows under the
penalties of perjury:

1. I am the attorney for the defendants Peter K. Strez and Catherine A.
Strez (the “Defendant’s”) in the above-captioned matter and as such am fully
familiar with the facts and circumstances herein.

2. I offer this affirmation in support of Defendants' Cross-Motion for Summary Judgment denying Plaintiff's motion for summary judgment, striking Plaintiff's complaint, and dismissing the action.

3. Plaintiff filed a complaint on March 29, 2011 (the "Complaint"), annexed hereto as **Exhibit "A"**.

4. Plaintiff filed an amended complaint on May 18, 2011 (the "Amended Complaint").

5. Defendants filed a *pro se* answer to the Complaint on May 26, 2011 (the "Answer"), annexed hereto as **Exhibit "B"**.

6. Current counsel for Defendants, Jaime Lathrop, Esq., filed a notice of appearance on March 6, 2012.

7. Defendants filed an amended answer with counterclaims to the Complaint on March 12, 2012 (the "Amended Answer"), annexed hereto as **Exhibit "C"**.

8. Plaintiff filed a verified reply to the Amended Answer on March 21, 2012 (the "Verified Reply").

9. Plaintiff filed a motion for summary judgment on September 25, 2012 (the "Summary Judgment Motion").

10. This Court then set down a briefing schedule, dated December 6, 2012, setting deadlines to fully brief the Summary Judgment Motion, including Defendants' instant Cross-Motion for Summary Judgment.

11. A copy of the required text of the 90-day notice under N.Y. R.P.A.P.L. § 1304(1) is annexed hereto as **Exhibit "D"**.

12. Annexed to this Affirmation as **Exhibit "E"** are the 90-day notice of default and 30-day notice of default provided by Plaintiff to Defendants, pursuant to New York State Real Property Actions and Proceedings Law § 1304 as well as the terms of the subject note and mortgage. Copies of the subject note and mortgage are annexed hereto as **Exhibit "F"** and **Exhibit "G"**, respectively. As will be further developed in the accompanying memorandum of law, the notices do not strictly comply with the requirements of that statute or the contractual provisions of the note and mortgage. Therefore, Plaintiff cannot allege any set of facts upon which relief can be granted, and Plaintiff's Summary Judgment Motion should be denied, its Complaint struck, and the current action dismissed in its entirety.

Dated: December 20, 2012

Respectfully Submitted,

/s/ Jaime Lathrop

Jaime Lathrop, E.D. Bar No. JL125405
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